STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Joint Submission of the Amended	**)**	
Plan of Record for Operations	**)**	**Docket No. 00-0592**
Support Systems ("OSS")	**)**	

BRIEF ON EXCEPTIONS OF COVAD COMMUNICATIONS COMPANY AND RHYTHMS LINKS, INC.

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. DISPUTED ISSUE 13: CUSTOMER SERVICE RECORD ADDRESS VALIDATION (LITE EDIT) 4

A. Argument 5

1. Introduction 5

2. Lite Validation Should Apply to Orders for New DSL Loops 5

3. Lite Validation Should be Implemented by December 31, 2000 7

4. Conclusion 11

B. Specific Exceptions 11

III. DISPUTED ISSUES 29 AND 31: DSL LOOP QUALIFICATION 15

A. Argument 16

1. The Commission Should Require SBC/Ameritech to Provide Information on up to Ten Loops in the Pre-Ordering Process as of December 31, 2000, Not March 2001 as the HEPO Recommends. 16

2. Requiring the Provision of Spare Loop Availability Information Without Also Requiring Loop Reservation is Meaningless. 18

3. SBC/Ameritech Must be Required to Provide Terminal Makeup Information in the Pre-ordering Process. 21

B. Specific Exceptions 22

IV. DISPUTED ISSUE 56: COOPERATIVE TESTING – LOOPS 26

A. Argument 26

1. Introduction 26

2. The Commission Must Take Steps to Ensure that SBC/Ameritech Improves Its Poor Performance in Providing Loop Acceptance Testing. 27

3. The Commission Must Ensure that SBC/Ameritech Follows Through on the Commitments It Made at the Hearing. 30

4. Conclusion 32

B. Specific Exceptions 32

V. DISPUTED ISSUE 94: DARK FIBER/COPPER INQUIRY PROCESS 36

VI. CONCLUSION 37

I. INTRODUCTION

Covad Communications Company ("Covad") and Rhythms Links, Inc. ("Rhythms") (hereafter jointly referred to as "Data CLECs") file these exceptions to the Hearing Examiner's Proposed Order ("HEPO"). The HEPO adopts SBC/Ameritech's position on almost each aspect of the disputed issues addressed by the Data CLECs: lite address validation (Issue 13); loop pre-ordering information and loop reservation (Issues 29 and 31); cooperative and acceptance testing (Issue 56); and dark fiber (Issue 94). In these exceptions, the Data CLECs show that the HEPO does not go far enough on these issues to foster competition and that SBC/Ameritech's Amended Plan of Record for Operational Support Systems ("OSS") must be revised as proposed herein.[1]

As this Commission is well aware, Covad and Rhythms are competitive local exchange carriers ("CLECs") that provide high speed Internet and network access utilizing Digital Subscriber Line ("DSL") technology. As the Commission is also well aware, in order to provide service, Covad and Rhythms are forced to rely on various aspects of SBC/Ameritech's pre-ordering and ordering OSS which allow them to submit orders for and, ultimately obtain, DSL-capable loops. The customer's location and characteristics of the loop are critical factors for the Data CLECs to be able to determine the type of DSL service that they can provide to their customers. This is because, unlike voice service, the Data CLECs' ability to provide service varies depending on the line's characteristics (*i.e.*, the existence of

[1]Specific POR language to implement the changes described herein is provided in Covad's and Rhythm's Final Statement of Position.

load coils and bridged taps) and its length (*i.e.*, if the loop is longer than 18,000 feet certain types of DSL services may not be provisioned[2]).

The Federal Communications Commission ("FCC") has made clear that the non-discrimination principles of the Telecommunications Act of 1996 (47 U.S.C. §§ 151 *et seq*.) ("1996 Act") require incumbent local exchange carriers like SBC/Ameritech to provide CLECs with any information that "exists anywhere within the incumbent's back office and can be accessed by any of the incumbent LEC's personnel." *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking,* ¶ 430 *("UNE Remand Order")*.

In particular, the FCC's UNE Remand Order requires that the "incumbent LEC must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether a loop is capable of supporting the advanced services equipment the requesting carrier intends to install." *UNE Remand Order*, ¶ 427. To that end, the FCC held:

> Under our nondiscrimination requirement, an incumbent LEC cannot limit access to loop qualification information to such a green, yellow, or red indicator. Instead, the incumbent must provide access to the underlying loop qualification information

[2]For example, Covad can provide any of its DSL services over a loop facility unless the following factors are encountered: (1) a loop is provisioned on fiber, and (2) the copper loop is longer than 18,000 feet. If these factors are encountered, a customer can obtain only Covad's slowest DSL service, IDSL. (Covad Initial Comments, Covad Ex. 2, p. 6)

> contained in its engineering record, plant records and other back office systems so that requesting carriers can make their own judgments about whether those loops are suitable for the services the requesting carriers seek to offer.

Id. at ¶ 428.

Access to OSS is critical to a CLEC's ability to compete. Thus, the UNE Remand Order requires that CLECs be permitted the same level of access to data as ILECs enjoy themselves. This Commission has enforced the FCC's mandate. In the Rhythms/Covad line sharing arbitration with SBC/Ameritech, the Commission recognized the obligations imposed on SBC/Ameritech by the 1996 Act related to the provision of OSS and ordered SBC/Ameritech to provide the CLECs full access to all OSS to which SBC/Ameritech employees have access. *Covad/Rhythms Line Sharing Arbitration Award*, Dockets 00-0312/00-0313 (Aug. 17, 2000).

The evidence submitted in this proceeding demonstrates that the pre-ordering and ordering OSS functions requested by Covad and Rhythms already exist in SBC/Ameritech's OSS and are available to its employees. (Covad Initial Comments, Covad Ex. 2, p. 8) However, the HEPO fails to require that the requested functions and information be provided to CLECs. In particular, the HEPO fails to require non-discriminatory access to the following functions and information: (1) Lite address validation for stand-alone DSL-capable loops;[3]

[3] *See* Issue 13, below.

(2) loop reservation;[4] and (3) terminal makeup.[5] Because SBC/Ameritech currently has access to these functionalities and information, CLECs must be granted similar access to allow them to compete and provide service in Illinois. In addition, the HEPO errs by giving SBC/Ameritech until February 2001 to implement Lite validation and until March 2001 to provide expanded loop information. The HEPO fails to address the Data CLECs' position with respect to loop acceptance and cooperative maintenance testing. Such testing is essential for delivering and maintaining reliable service to Rhythms' and Covad's end user customers. While Ameritech has agreed to perform loop acceptance and cooperative testing for xDSL and ISDN capable loops, this open-ended promise is of little value absent a Commission mandated implementation timetable. Finally, the HEPO does not require an expeditious dark fiber inquiry process.

II. DISPUTED ISSUE 13: CUSTOMER SERVICE RECORD ADDRESS VALIDATION (LITE EDIT)

Statement of Issue: **When a CLEC order is received by SBC/Ameritech, validation rules are applied to the address fields on the order. Orders are often rejected if the address is not identical to the corresponding address in SBC/Ameritech's data base. SBC/Ameritech currently proposes to relax the address validation rules for resale, UNE-P, loops with number portability and line shared loops, by March 2001. The Data CLECs proposed that Lite validation be implemented by December 31, 2000, and that it also apply to orders for new DSL loops. The HEPO found that Lite validation must be implemented by**

[4] *See* Issues 29 and 31, below.

[5] *See* Issues 29 and 31, below.

	February 2001, and that it need not be applicable to orders for new DSL loops.
Competitive Ramifications:	**The sooner relaxed validation is implemented, the sooner unnecessary order rejects will be reduced, and CLEC end user customers will receive service on a more timely basis. SBC/Ameritech has not satisfactorily explained why it cannot implement Lite validation by December 31, 2000 and why Lite validation is not applicable to orders for new DSL loops.**

A. Argument

1. Introduction

There is no disagreement -- and the HEPO finds -- that SBC/Ameritech's OSS validation process should be relaxed such that an address need not be provided for CLEC orders. The only issues in dispute relate to the timing and scope of this "Lite" validation. The HEPO adopts SBC/Ameritech's proposal -- and rejects the position of Staff and all the CLECs that addressed the issue -- by requiring Lite validation to apply to only some orders and to be implemented in February 2001. (HEPO, pp. 66-67) The Commission must reject the HEPO's flawed conclusions on these issues, and require SBC/Ameritech to apply Lite validation to orders for new DSL loops and to implement Lite validation by no later than the end of 2000.

2. Lite Validation Should Apply to Orders for New DSL Loops.

The HEPO adopts SBC/Ameritech's proposal to offer Lite validation on only migration orders for resale, UNE-P, line shared loops and loops with number portability. The HEPO finds that applying Lite validation to orders for new DSL loops "would not benefit competition,

and could very well harm competition and reduce the quality of service to the end user, by creating confusion between AI, Covad, and the end user about where such service would be installed." (HEPO, p. 67) The Commission must reject this unfounded conclusion and instead find that Lite validation should also apply to orders for new DSL loops.

Lite validation allows a CLEC to place an order using an end user's ten digit telephone number as an identifier, rather than requiring the CLEC to input the end user's address precisely as it appears in Ameritech's databases. As the record establishes, CLECs such as Covad, Rhythms and AT&T currently have approximately 35-40% of their orders rejected as a result of address-related errors. (Tr. 788-89, 794) Accordingly, CLECs have repeatedly requested that SBC/Ameritech allow them to place orders using only the end user's telephone number. In contrast to the address validation process, a telephone number can only be stated one way, as SBC/Ameritech's witness acknowledged. (Tr. 703) Thus, Lite validation substantially reduces the likelihood of order errors and concomitantly decreases the number of CLEC orders rejected.

During the collaborative process preceding this arbitration, SBC/Ameritech committed to allow Lite validation for resale, CPO, loop with number portability and stand alone number portability orders. (Amer. Ex. 15, p. 38) Then, during the pendency of the arbitration, Ameritech agreed to allow Lite validation for line shared orders. (Tr. 728) Yet, Ameritech inexplicably refuses to allow CLECs to use the same process to submit orders for DSL loops.

SBC/Ameritech has not justified its exclusion of orders for DSL loops from Lite validation. SBC/Ameritech claims that it is offering Lite validation for only "migration" orders

or changes to an existing service, but not for "new service." (Tr. 711) However, SBC/Ameritech is offering Lite validation for line sharing and it considers line sharing a new service. (Tr. 725) Thus, SBC/Ameritech's justification for its exclusion of new loop orders is inconsistent with its own practice. SBC/Ameritech claims in its final comments that Lite validation would apply to a new DSL loop ordered by an existing customer keeping a line with SBC/Ameritech. (*See* Amer. Final Comments, p. 63) However, that simply does not go far enough. Since orders for new DSL loops flow through the same OSS gateways and backend systems as orders for line shared loops, the same validation should apply to them as is applied to orders for line shared loops.

SBC/Ameritech has argued, and the HEPO apparently agrees, that this cannot occur because there may not be an address associated with the new DSL line. (Amer. Final Comments, p. 64) This concern is misplaced. While the order for the DSL loop may be validated based on the customer's phone number,[6] that does not mean, as SBC/Ameritech suggests, that no address is provided. The address would in fact be provided, but just not used to validate the order. There is absolutely no record evidence to support the HEPO's conclusion that this could lead to any anti-competitive results.

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[6] Indeed, SBC/Ameritech acknowledged that it could identify the end user's location using only a telephone number, even if the CLEC orders a stand-alone DSL loop. (Tr. 730) While SBC/Ameritech raised the specter that it could install the line to the wrong address without address validation, it presented no evidence to support its contention. Moreover, as detailed above, the CLECs would provide an address as confirmation. Thus, contrary to SBC/Ameritech's assertions, there is no real risk that SBC/Ameritech would install a DSL line to the wrong address. Lite validation for stand-alone DSL loops would simply ensure that CLEC orders would no longer be rejected because the CLEC submitted an order with an error, such as listing the address as "3130 Lakeshore Av." rather than "3130 Lakeshore Ave."

In sum, there is absolutely no valid rationale for not offering Lite validation for orders for new DSL loops. The Commission must reject the HEPO's conclusion on this point.

3. Lite Validation Should be Implemented by December 31, 2000.

SBC/Ameritech's POR, which is the subject of this proceeding, reflects that SBC/Ameritech offered to implement a limited form of Lite validation by December 2000. (Jt. Pet., Ex. 2, p. 11) It was only after it filed its POR that SBC/Ameritech changed its position and slipped the date back by three months. (Tr. 768-69) It is not clear what prompted SBC/Ameritech to conclude at the last minute that it could no longer do what it had committed to the CLECs and Staff that it would do. (*See* Tr. 768) Notwithstanding the fact that SBC/Ameritech apparently believed at one time that it could implement Lite validation by the end of the year, the HEPO accepts SBC/Ameritech's argument that it cannot now do so, and adopts a February 2001 implementation. A December 2000 implementation date is not soon enough. February 2001 is simply unacceptable.

The evidence establishes that the most frequent reason that SBC/Ameritech rejects CLEC orders is because the street address provided by the CLEC does not match the street address against which SBC/Ameritech validates the order.[7] This is clearly a significant problem.[8] The evidence further demonstrates that Lite validation will significantly improve the

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[7]Industry-wide, approximately 35% of all orders reject for this reason. (AT&T Ex. 4, p. 25)

[8]When a reject occurs, the CLEC must attempt to discern which portion of the address did not match the customer record address. Once it makes that determination, it must manually resubmit the order. Since SBC/Ameritech does not inform the CLEC as to the correction that needs to be made (it merely informs the CLEC which field has an erroneous entry), there is no guarantee that the resubmitted order will not be rejected. (Tr. 735-37) Manual re-submission of orders also introduces many additional steps that must be performed by the

problem. (Covad Initial Comments, Covad Ex. 2, p. 4; Tr. 800) CLECs should not have to wait any longer for this impediment to competition to be removed. The Commission must adopt the position of the Staff and the CLECs that Lite validation should be implemented by the end of the year.

While the Commission might wonder why two months is so important, Staff succinctly explained the significance of such a delay in its comments at page 51:

> The time frame between December 2000 (considering the previously missed September 2000 implementation date) and March 2001 will make a difference both in terms of negative impact on the CLECs and the marketplace. The extra three months proposed by Ameritech for implementing this change could well affect the CLECs' ability to compete.

Rhythms' witness Brian Baltz confirmed that the delay would adversely affect CLECs' ability to compete:

> [B]y pushing that release out, we are not engaging in light validation. That means that we are going to experience a reject rate of 35 to 40 percent for an additional 90 days. That means that we are not going to be able to offer service to our end users in a reasonable cycle time. So it's critical that validation is released as quickly as possible. . . . You always have the ability to correct the rejects, but the goal would be to eliminate the reject and allow that order to flow correctly the first time through.

(Tr. 798-99) While the Data CLECs do not believe December 2000 is soon enough, it is exceedingly better than the new implementation date of February 2001 set forth in the HEPO.

CLEC and, with each step, the CLEC must guess how the address is stored in SBC/Ameritech's SAG, creating an additional opportunity for error (and additional rejections) to occur. Each additional submission requires the use of additional CLEC resources and results in additional delay in the date on which the CLEC's customer receives service. (AT&T Initial Comments, AT&T Ex. 4, pp. 25-29; Covad Initial Comments, Covad Ex. 2, p. 4)

The HEPO's rationale for adopting a February 2001 implementation is flawed for two reasons. First, it relies on SBC/Ameritech's unsubstantiated claim that a December implementation would work an "unnecessary hardship." (*See* HEPO, p. 66) As Staff correctly pointed out in its final comments, not only did SBC/Ameritech fail to substantiate its claim that its workload required it to delay implementation of Lite validation, it never claimed that it could not implement Lite validation by December 31, 2000. (Staff Final Comments, p. 52) SBC/Ameritech could implement this change by the end of the year, if it were required to do so.[9] It is incredulous that the HEPO would accept SBC/Ameritech's back-sliding. The Commission must not do the same.

Second, the HEPO's February implementation date was apparently pulled out of thin air as a Solomonic effort. No party proposed a February implementation. Moreover, it is unclear whether the HEPO requires implementation by February 1st or February 28th. If it is the latter and not the former, then the HEPO has simply adopted SBC/Ameritech's position without stating as much. Either way, if the Commission incorrectly agrees to the delay condoned by the HEPO, the HEPO must be revised to correct this ambiguity.

SBC/Ameritech has argued that Lite validation is not as pressing a change as it once was because of the improvements made to SBC/Ameritech's address validation transaction to include validation through the living unit database during the pre-ordering process. (Amer. Final Comments, p. 63) While improvements have been made in the pre-ordering process,

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[9]The evidence shows that SBC/Ameritech's affiliate, SWBT, implemented Lite validation in Texas within 30 days. Its decision to do so was based on its desire to obtain 271 authority. (Tr. 771-72) The only difference here is that since SBC/Ameritech is not seeking such authority, it has no real incentive to implement this change quickly.

a significant portion of orders nevertheless continue to be rejected due to the translations needed to fill in the address fields in the ordering form. (Tr. 740-41) SBC/Ameritech's promises of future OSS gateway improvements to address validation only highlight the fact that SBC/Ameritech would prefer to "hack" at the software instead of fix the problem. In short, to eliminate the problem of order rejects because of address discrepancies, Lite validation must be implemented, and there is simply no valid reason not to require SBC/Ameritech to do so by the end of the year.

4. Conclusion

In order to ensure that CLEC orders are not being inappropriately rejected, *i.e.*, rejected when the correct phone number is provided, the Commission should require SBC/Ameritech to offer Lite validation for all order types by no later than the end of the year.

B. Specific Exceptions

1. The "Background" section should be revised as follows:

> Industry standards require every request for service to include the address at which that service is to be performed. (Tr. 784-785). AI checks CLEC service orders against its own address databases (the Street Address Guide or "SAG," for street address information, and the "living unit" database for information on apartment numbers) before accepting them for processing. If the order does not match the address in AI's records, AI returns it to the CLEC for correction, along with a notice that states why the order was rejected.
>
> To assist CLECs in correctly identifying the customer location, AI offers an on-line "address validation" function via its pre-order interface. AI witness Gilles explained that a CLEC can use this function to check the address on its order against the same Street Address Guide and "living unit" databases that AI's own retail personnel access when placing an order. The address validation function returns an answer within seconds, along with

suggested corrections if the address submitted by the CLEC does not match the database.

CLECs allege that many of their orders are rejected for inappropriate reasons: either because of minor discrepancies in format (the hypothetical advanced by counsel for Covad involved an order in which the CLEC abbreviated "avenue" as "av." instead of "Ave.") or because the address information in the customer service record ("CSR", another database that CLECs can access in pre-ordering) does not match the address databases. In response, AI has proposed to implement relaxed or "Lite" address validation for certain orders in March of 2001. (The Plan of Record, as provided to Staff and to the CLECs for red-lining on August 30, contains a proposed implementation date of December 2000. Although AI had planned to implement Lite validation in December, it determined on the following day that it would be unable to meet the December date, due to the schedule of other releases already planned for December. As the POR had already been distributed to the parties by that time, AI revised the implementation date to March 2001, and explained the reasons for that change, in its Initial Comments.) Lite validation allows a CLEC to submit an order *without* an address, using instead the customer's telephone number to identify the location at which AI is to install service, and thus bypass the address edit that is currently performed for all orders. The customer's address would become optional information.

The CLECs ~~agree with AI's proposal, but~~ seek to accelerate ~~it's~~ the timing of implementation of Lite validation (*i.e.*, the CLECs want Lite validation before March 2001) and increase its scope (specifically, Covad and Rhythms want~~s~~ AI to perform Lite validation on orders for new DSL loops).

2. The "CLEC Position" section should be revised as follows:

The reason AI rejects a significant number of CLEC orders is because of erroneous information, including addresses, on the order form. In some cases this is because the street address provided by a CLEC does not match the street address by which AI typically validates orders. (AT&T Initial Comments at 26.) Under the current procedure followed in the pre-ordering process, AI provides CLECs access to the Customer Service Record (CSR) database, the CLECs then use

the information in the CSR to populate the order they must provide AI. Also, AI provides CLECs access to the AI Street Address Guide (SAG) database, which contains the valid street addresses of AI end-users. According to the CLECs, these two databases do not always match in format and content. Depending on the type of order from the CLECs, AI validates the order through either the CSR or the SAG database. (AT&T Initial Comments, at 26-27.)

Furthermore, the CLECs experience problems with the accuracy of the SAG and CSR databases. For example, when CLECs send an order, AI requires that CLECs provide the street address of the end-user. If the CLECs use the CSR to format the street address in an order, discrepancies both in format and content cause the order to be rejected even if the address provided matches the address information contained in AI's CSR. To overcome this problem, the CLECs want AI to conform its CSR database to the SAG database by replacing anomalies in the CSR to correct address information, as prescribed by the SAG. (AT&T Initial Comments at 26 27.) AT&T posits this synchronization of the two data bases as a "long-term" project. (Id. at 29.) and proposes a date of March 2001 for the development of the synchronization process. (AT&T Exhibit 1, FMO, Section C, Ordering at 52-53.)

The CLECs also want AI to implement relaxed address validation for migration orders for resale, CPO and loop with number port by December 2000. (Id. at 52.) In other words, AI will not require address validation at all on these limited sets of order types and the order will only be validated on the telephone number (TN) provided. Covad also objected to the fact that relaxed address validation will not be implemented for ~~the~~ line sharing and DSL loop orders. (Initial Comments of Covad Communications at 4-5.)

In its Final Comments, AT&T asks the Commission to take the following action in regard to the problem of address validation.

First, the Commission should order AI to apply the light edit fix for all order types that would be provided to a customer with an existing Ameritech telephone service. For example, a CLEC may be sending a "loop-only" request to Ameritech for a

customer that currently has a telephone number with Ameritech. This situation should be included in the light edit fix.

Second, the Commission should order AI to meet its initial commitment to make light edits available in December 2000.

Third, the Commission should order AI to take the necessary action to allow CLECs to validate all addresses through the telephone number. This should be done by AI syncing up the SAG/living unit databases and the CSR address databases.

Covad and Rhythms would like to have "lite" address validation available for xDSL unbundled loop orders as well as for line shared loops. Covad and Rhythms believe~~s~~ this should be available by December, 2000.

3. The "Conclusion" should be revised as follows:

AI commits to implementing relaxed address validation in March 2001. It opposes any earlier implementation of this function on grounds that the costs would exceed the benefit and that some enhancement is already in place to assist the CLECs. AI explains that an analysis of the work involved and the competing requirements of other OSS changes, make provisioning earlier than March 2001 an unnecessary hardship.

~~We are not unsympathetic to AI's position. Nevertheless, g~~ Given the critical importance of this functionality to the CLECs (as expressed in their respective comments on the issue and in Staff's comments) we believe that ~~the~~ relaxed address validation ~~committed to by AI~~ should be given top priority. In doing so, we take account of AI's other commitments as well as the timing and other facets of our order in these premises. In the end, ~~we direct AI to implement relaxed address validation, pursuant to its commitment, by February 2001.~~ the Commission agrees that AI has failed to explain why it changed its position in the eleventh hour after filing its POR and concluded that it could not implement Lite validation by December 31, 2000, as stated in the POR before us. We conclude that AI apparently believed at one time that it could complete this change by the end of the year. We will therefore hold AI to this commitment.

Once "Lite" address validation is put into operation, AI will examine the ways and means by which it can synchronize its CSR and SAG databases. It shall set out a plan for the project, with detail, as per Staff's recommendations and provide a report to the Commission on May 1, 2001. ~~We agree that Covad's proposal would not benefit competition, and could very well harm competition and reduce the quality of service to the end user, by creating confusion between AI, Covad, and the end user about where such service would be installed.~~

Finally, Covad and Rhythm propose that Lite validation should apply to orders for new DSL lines. They believe this is necessary to remove a competitive obstacle to their provision of data services. The Commission agrees with Covad and Rhythms that it is equally important that the ordering problems resulting from address errors be eliminated for the provision of data services as for voice services. AI claims that it is necessary to have a phone number to verify the recipient of data service. AI's rationale for not applying Lite validation to new DSL loops is simply not credible and not in keeping with the changes occurring in this and other industries. It has become increasingly common to use a phone number as a source of identification. There is no reason why that cannot be done for data loops, even if the phone number is provided by a different carrier. Use of a phone number would eliminate AI's concerns and would enable Lite validation to work. We therefore conclude that AI should be required to make Lite validation available for orders for new DSL loops by December 31, 2000.

III. DISPUTED ISSUES 29 AND 31: DSL LOOP QUALIFICATION

Statement of Issue:

This disputed issue involves 3 separate issues: (1) Whether CLECs should be provided information in the pre-ordering stage regarding more than a single available loop to a particular customer location. The Data CLECs propose that SBC/Ameritech provide information on up to 10 available loops for a particular location and the HEPO agreed; (2) Whether CLECs should be allowed to reserve loops identified in the pre-ordering process. The Data CLECs originally proposed a four-day reservation

period. The HEPO rejected that proposal. The Data CLECs now propose a one-day reservation period; and (3) Whether SBC/Ameritech should provide a pre-ordering function which allows CLECs to inquire about the configuration of a particular terminal. The Data CLECs requested such information. The Data CLECs propose that these enhancements be made available by December 31, 2000. The HEPO requires that multiple loop information in the pre-ordering process be made available by March 2001, but that loop reservation not be required.

Competitive Ramifications:

If SBC/Ameritech is allowed to continue providing information in the pre-ordering process on only a single loop that is capable of providing service to a particular location, the CLEC's customer may be unable to obtain the fastest speed of DSL service available, and may face increased cost or delay in obtaining DSL service. If the CLEC proposal is adopted, the CLEC will be able to inform the customer as to its DSL service options, and the customer can then make an informed decision concerning the type of DSL service it wishes to obtain. Even if the CLEC pre-ordering proposal is adopted, the customer is not guaranteed that it will be able to obtain its desired DSL service unless the CLEC is allowed to reserve the particular loop upon which the customer made its decision in the pre-order process. If a loop may be reserved, the CLEC can guarantee to the customer that it will be able to provide the particular service desired by the customer.

A. Argument

1. The Commission Should Require SBC/Ameritech to Provide Information on up to Ten Loops in the Pre-Ordering Process as of December 31, 2000, Not March 2001 as the HEPO Recommends.

Recognizing the importance of removing SBC/Ameritech's ability to limit the data services a CLEC may offer its customers, the HEPO adopts the Data CLEC position that SBC/Ameritech must provide access to spare loop availability information. (HEPO, pp. 85-86) However, the HEPO rejects the Data CLECs' position that this information must be provided as of December 31, 2000. (HEPO, p. 86) The Commission must conclude that it cannot wait three more months to eliminate this competitive barrier.

The HEPO agrees with the Data CLECs that SBC/Ameritech's current process of providing only one loop in response to a CLEC request is problematic and anti-competitive. The HEPO notes that the process could result in the CLEC paying conditioning charges that would not be required if another available loop were selected. (HEPO, pp. 85-86) The HEPO also notes that SBC/Ameritech's process limits the services CLECs can provide and inappropriately requires CLECs to divulge competitively sensitive information to SBC/Ameritech in order to obtain an acceptable loop. (*Id*.) Staff agreed that these problems are inherent in the current system. (Staff Final Comments, pp. 70-71) For all these reasons, the HEPO correctly concluded that SBC/Ameritech must provide CLECs spare loop availability information concerning up to ten loops in the pre-ordering process.

Notwithstanding the overwhelming evidence concerning the problems inherent in the current pre-ordering process, the HEPO accepts SBC/Ameritech's claim of "burden" and concludes that SBC/Ameritech need not modify its systems to provide spare loop availability

information until March 2001.[10] (HEPO, p. 86) This conclusion is anti-competitive, unsupported and must be rejected by the Commission.

The question before the Commission is whether it is willing to allow SBC/Ameritech to continue to engage in anti-competitive practices for another three months, or whether it will require SBC/Ameritech to cease those practices more quickly. The HEPO answers this question by concluding that the costs of the timely elimination of this competitive barrier outweigh the benefits. The fallacy of this conclusion – aside from the fact that it allows SBC/Ameritech to continue to impede competition for data services – is that it is not based on record evidence. While SBC/Ameritech's initial and final comments stated that the costs of implementing this change would be high, nowhere did SBC/Ameritech indicate the increase in cost to make the change effective December 31, 2000 as opposed to March 2001. In the absence of such evidence, there simply is no basis for the HEPO's conclusion that it would be too burdensome to require SBC/Ameritech to make this needed change by the end of the year. The Commission must therefore reject that aspect of the HEPO's conclusion on this issue, and require that the systems changes be made so that CLECs are provided spare loop availability information on up to ten loops in the pre-ordering process by December 31, 2000.

2. Requiring the Provision of Spare Loop Availability Information Without Also Requiring Loop Reservation is Meaningless.

[10]While the HEPO notes that SBC/Ameritech also claimed that the Data CLECs' position was "unreasonable," one can only assume that the HEPO rejected that contention by its adoption of the Data CLECs' position that spare loop availability information must be provided.

While the Data CLECs commend the HEPO for its recognition of the impact of SBC/Ameritech's current pre-ordering process, the HEPO does not go far enough in correcting this problem. The HEPO provides absolutely no guarantee that any of the ten loops, for which information is provided in the pre-ordering stage, will be available. The Data CLECs request that the Commission require some reservation period to give substance to the HEPO's conclusion that it is anti-competitive for SBC/Ameritech to provide information on only a single loop in the pre-ordering stage.[11]

After a blistering discussion of the evils attendant the current SBC/Ameritech process of identifying an individual loop in the pre-ordering process, in just a single sentence, the HEPO rejects the Data CLECs' request for a loop reservation process. (HEPO, p. 86) It makes absolutely no sense to, on the one hand, conclude that SBC/Ameritech should provide additional loop information in the pre-ordering process so as to not stymie the CLECs' ability to inform their customers as to available data service options and then, on the other hand, to conclude that SBC/Ameritech need not ensure that any of those loops will be available when the CLEC places an order. In other words, the loop information requirement is ineffective without some loop reservation policy.

The overwhelming evidence establishes that some reservation period is essential to give the pre-ordering process any meaning. This is because CLECs competing with SBC/Ameritech face a serious problem that the loops they pre-order will not be available for

[11]In its initial comments, Staff supported an enhancement to the ordering process that would allow CLECs to order a specific loop identified during the pre-ordering process. (Staff Initial Comments, p. 40)

provisioning. Since the specific characteristics of the loop limit the type of DSL service that can be offered over it, this problem sometimes results in a failure to meet the end use customer's expectations and service needs. Requiring access to the spare loop availability function does not address this problem if CLECs cannot be assured that the loops identified in the pre-ordering process are not assured to be available for some minimum time period. While the Data CLECs originally proposed a four business day loop reservation policy, as a compromise they would be willing to accept a 24-hour reservation period, which begins when SBC/Ameritech provides to the CLEC the loop availability information.[12]

The HEPO was apparently swayed by Staff's concern that a loop reservation policy could lead to anti-competitive behavior. (HEPO, p. 86) As a threshold matter, since the Data CLECs are now proposing only a 24-hour reservation period, there could be no anti-competitive gaming. Moreover, these claims of potential anti-competitive conduct should also be dismissed for several other reasons. First, the fact that BellSouth has a loop reservation process in place and that there have been no anti-competitive problems identified on this record establishes as unfounded Staff's concern.[13] Moreover, the suggestion that a CLEC

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[12] Currently, a CLEC submits a loop information request during the pre-ordering process and SBC/Ameritech may take five days to respond to the CLEC's request.

[13] In BellSouth's serving area, once a CLEC determines which loop will best allow it to provide a particular service to an end user, BellSouth allows the CLEC to reserve that loop for up to three days. This process ensures that the designated loop will be available once the CLEC's loop order is submitted and processed. (*See* Verified Statement of Bogdan Szafraniec, Covad Ex. 2, Ex. A) This procedure ensures that the loop qualified and the loop provisioned will match.

might abuse the system has been made before in other contexts, yet there is no evidence that any CLEC is abusing the process.[14] Further, system abuses are very easy to monitor.[15]

In sum, without the ability to order the loop, there is little point in having access to information concerning available loops. A reservation process is the only way to ensure that CLECs can meet their customers' service expectations and satisfy their service needs. The HEPO misses the mark on this issue and that failure nullifies the HEPO's conclusion to require the provision of information on up to ten loops in the pre-ordering process.

3. SBC/Ameritech Must be Required to Provide Terminal Makeup Information in the Pre-ordering Process.

The HEPO rejects the Data CLECs' request for access to terminal makeup information on the basis that the proposal is "vague" and "not necessary." (HEPO, p. 86) The HEPO is wrong on both counts. The Commission must require SBC/Ameritech to provide CLECs access to the terminal makeup information currently contained in its OSS.

The Data CLECs' proposal is clear: they seek access to terminal configuration information stored in SBC/Ameritech's OSS in order to determine the alternatives for providing DSL service to a particular customer and to assist them in planning for subloop

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[14]The industry has long operated under a system where orders are placed for service on the basis of requests from end user customers for that service, and there has been no gaming of the system. (Tr. 875-77) While the reservation proposal assumes that CLECs have a good faith belief that the service will be ordered, the Data CLECs would not oppose including that specific requirement in the POR.

[15]This can be done by looking at the ratio of reservations of all CLECs. While the Data CLECs do not believe there is a real risk of anti-competitive behavior, they would not oppose including a limitation on the reservation process that would prevent CLECs from reserving lines if the percentage of lines they reserve compared to the percent of lines they actually acquire becomes distorted.

ordering. (Covad Initial Comments, Covad Ex. 2, p. 11) What is also clear is SBC/Ameritech's refusal to provide CLECs the type of information that will better enable them to serve their customers.

SBC/Ameritech takes the position -- and the HEPO seems to agree -- that the Data CLECs are seeking access to customer-specific information that is confidential and that they do not need. (*See* HEPO, p. 82) SBC/Ameritech is wrong in both regards. First, the information requested by the Data CLECs concerns SBC/Ameritech facilities and the services it offers off of those facilities. (Tr. 878-87) Since there are significant differences in the manner and types of service a DSL provider may provide to a customer when the terminal is served by copper cable versus fiber cable,[16] the requested information is necessary for a CLEC to know what service it can offer a customer. Second, the Data CLECs do not seek -- and would not be provided -- any proprietary customer information if their proposal is adopted. (Tr. 896) All that the CLECs desire is information that is necessary to determine what services they can offer their customers. (*Id*.)

In any event, as noted earlier (*see* Section I, above), ILECs, like SBC/Ameritech, are required under the non-discrimination principles of the 1996 Act to provide CLECs with any information that "exists anywhere within the incumbent's back office and can be accessed by any of the incumbent LEC's personnel." *UNE Remand Order,* ¶ 430. The CLECs must be permitted the same level of access to data as the ILECs, and in the same format. *UNE*

[16]For example, where a customer is served by fiber facilities, only Covad's IDSL service can run over the blended facilities at this time. In contrast, access to the copper facilities allows data CLECs to offer a broader range of DSL services. (Covad Ex. 2, p. 11)

Remand Order, ¶ 429. This Commission has also found that SBC/Ameritech must provide CLECs full access to all OSS to which SBC/Ameritech employees have access. *Covad/Rhythms Line Sharing Arbitration Award*, Dockets. 00-0312/00-0313 (Aug. 17, 2000). Since the information requested by the Data CLECs already exists in SBC/Ameritech's OSS and is available to its employees (Covad Initial Comments, Covad Ex. 2, p. 8), it must be made available to CLECs.

In conclusion, the Commission should reject the HEPO's conclusion and require SBC/Ameritech to provide CLECs access to the same terminal configuration information to which SBC/Ameritech has access.

B. <u>Specific Exceptions</u>

1. The discussion of the "CLEC Position" should be revised as follows:

> The CLECs set forth three specific requests relating to AI's loop selection process:
>
> First, the CLECs request that AI provide the CLECs with the spare loop availability functions available in its operational support systems (*See* Covad Initial Comments at 5). The CLECs argue that the "ability to access such information is critical to allowing Covad and other CLECs to offer service broadly to Illinois consumers." (Id. at 5). According to CLECs, the loop qualification process AI currently has in place restricts CLECs to offering the types of advanced services that only one particular loop can support (*See* id. at 6.). Since each loop has different characteristics and is capable of offering different levels of service, the CLECs reason they should be made privy to information related to ~~all~~ <u>more than just one</u> available <u>loop, as is AI's current policy, but instead should be given information on up to ten available</u> loops (*See* <u>Id</u>. at 8). Covad <u>and Rhythms</u> ask~~s~~ that the loop availability function ~~it is~~ <u>they are</u> requesting be provided by December 31, 2000 (*See* <u>Id</u>. at 9).

Second, the CLECs seek access to the loop reservation functionality in AI's OSS (*See* Covad Initial Comments at 9). According to the CLECs, AI's OSS currently reserves loops, but this type of functionality is not offered to Illinois CLECs (*See* id. at 10). The CLECs contend that having loop reservation as a pre-ordering function will ensure that the loop used to qualify an order matches the loop actually provisioned. As the situation currently exists, a CLEC may find itself in the unenviable position of having promised a customer a certain type of service during the pre-ordering phase only to have to later inform that customer they cannot get the particular service they were promised because AI actually provisioned a different loop (Id. at 10).

Third, the CLECs seek terminal configuration information which they claim is stored in AI's OSS in order to determine what options they can offer their end-user customers (Id. at 11). The CLECs contend that the geographic location of an end-user customer can determine the type of facilities that serve that customer (i.e. copper facilities, fiber facilities or both). (Id.) According to the CLECs, significant differences exist in the manner and types of services a DSL provider may provide to a customer when the terminal is served by copper cable versus fiber cable (Id.). As a result of these differences, it is vital that CLECs have the ability to access the terminal configuration information stored in AI's OSS to determine all available alternatives for providing DSL service to a particular customer (Id.). The CLECs demand that AI offer CLECs access to the terminal configuration inquiry by December 2000 (*See* Covad Initial Comments at 12).

Covad and Rhythms propose~~s~~ POR language changes to reflect their position on the above issues.

2. The "Analysis and Conclusion" section should be revised as follows:

We agree with Staff that AI should provide information on more than one loop in the pre-ordering stage. As requested by CLECs, AI should provide information on a maximum of ten (10) loops during the pre-ordering stage. The UNE Remand Order states, "the incumbent LEC must provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code, or on any other basis that the incumbent provides such information

to itself." (Para. 427) AI should not pick a loop for the CLEC based on the limited information about the service they plan on offering, but should instead, as the FCC requires, provide information on loops based on a particular address.

AI argues that its retail operations are only given information on a single loop in the pre-ordering process and therefore it should not be required to give more information to the CLECs. However the FCC made clear that "the relevant inquiry is not whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists anywhere within the incumbent's back office and can be accessed by any of the incumbent LEC's personnel." (UNE Remand Order, Para. 430) The Commission is also concerned that in order for a CLEC to get information about a loop they must tell AI which service they plan on offering. This is proprietary information. The service that the CLEC is providing is not information that AI should have access to. A CLEC should merely have to provide an address and then have information on multiple loops returned to them.

In addition, AI's optimization process in the ordering stage is anti-competitive. Currently AI requires a CLEC to tell them what services they plan on offering an end-user. Based on that information, AI's computer selects a loop for the CLEC to use. However, CLECs should have the ability to choose a loop based on the service they want to provide a customer and not have to disclose to AI what services they will be providing. We also find persuasive, as did Staff, AI's answer to data requests regarding the cost of conditioning a loop. AI charges $905.82 for removal of a load coil; $528.97 for removal of a bridged tap; and, $326.86 for removal of repeaters (*See* Covad Initial Comments at 7). If a CLEC can avoid these costs by choosing a different loop, that option should be available to them.

We believe that this information already exists in a mechanized form as AI is able to return the information from the optimization process in a matter of seconds. To the extent, however, that AI does not maintain this information in an mechanized format, AI is required to provide the information to CLECs in the same manner and timeframe that the information is available for AI personnel, i.e. manually, if such is the case. (UNE Remand Order, para. 430, 431).

CLECs request that AI implement this functionality by December 31, 2000. AI contends that this request would be "burdensome" and "unreasonable" and would require AI to "substantially reconfigure" its systems. ~~In light of this, the Commission orders that this functionality be included with the March, 2001 release.~~ Having rejected AI's position that this change is not needed, and having found that the current process is anti-competitive, the Commission agrees with Covad and Rhythms that AI must be required to modify its pre-ordering process in the manner described as soon possible, but by no later than December 31, 2000.

~~The Commission agrees with~~ Staff and AI take the position that the four-day loop reservation proposed by Covad and Rhythms should not be allowed at this time. The possibilities for anti-competitive behavior on the part of individual CLECs from this process ~~are far too abundant~~ appear to be the primary basis for their position. However, based on Covad's and Rhythms' brief on exceptions, the Commission concludes that a 24-hour reservation period meets the needs of the CLECs and avoids the concerns raised by AI and Staff. Therefore, AI shall amend its POR to include a 24-hour reservation period that will begin when the CLEC receives from AI the loop qualification information detailed above. This requirement shall be implemented by December 31, 2000.

Furthermore, the Commission ~~agrees with~~ rejects Staff's and AI's position that CLECs' terminal makeup request should not be granted ~~at this time~~. They claim the proposal is vague and as Staff suggests, is simply not necessary because of the information that will be provided by AI in the loop qualification process. The Commission rejects their position. The proposal is clear: CLECs require information concerning the terminal which serves the particular loop. This information is needed by the CLECs in order for them to determine what service they can offer the customer, and it exists in AI's OSS. Therefore, the Commission finds that AI must provide this information to CLECs in the pre-ordering process by December 31, 2000.

IV. DISPUTED ISSUE 56: COOPERATIVE TESTING – LOOPS

Statement of Issue: **Whether SBC/Ameritech should upon request provide CLECs with loop acceptance testing and cooperative maintenance testing for all types of DSL loops.**

Competitive Ramifications: **SBC/Ameritech's failure to provide effective loop acceptance testing and cooperative maintenance testing hampers CLECs' ability to provide reliable, timely service to its end user customers.**

A. Argument

1. Introduction

Issue 56 concerns whether Ameritech should be required to provide meaningful acceptance testing and cooperative testing on xDSL-capable loops. As noted in the HEPO, "acceptance testing" ensures that a loop is working properly at the time it is first provisioned to the CLEC, while "cooperative testing" is performed after maintenance on a CLEC's loop to make sure the loop has been repaired. (HEPO, p. 90) Acceptance testing and cooperative testing are of great importance to all competitive providers of DSL services because such testing is critical for ensuring that end user customers are provided high quality, reliable service. Rhythms and NorthPoint separately filed comments and participated in the hearing on this issue, and Rhythms and Covad, as well as NorthPoint, filed final statements addressing this issue. While the HEPO addresses some of the arguments raised by NorthPoint, it inexplicably fails to address any of the positions set forth by Rhythms and Covad on this issue. The Commission must address the arguments raised by Rhythms and Covad in this proceeding, and require SBC/Ameritech to implement meaningful acceptance testing and cooperative testing in Illinois.

2. The Commission Must Take Steps to Ensure that SBC/Ameritech Improves Its Poor Performance in Providing Loop Acceptance Testing.

Although the HEPO identifies the substance of Issue 56 as whether SBC/Ameritech should be required to provide acceptance testing and cooperative testing, the HEPO blindly accepts SBC/Ameritech's assertion that this issue has been settled with regard to xDSL loops. This erroneous conclusion appears to be based on the faulty assumption that SBC/Ameritech will follow through with its vague commitments to implement acceptance testing and cooperative testing -- despite the fact that SBC/Ameritech has been slow to implement effective acceptance testing in Illinois and has failed to provide cooperative testing in Illinois at all. Experience has shown that SBC/Ameritech will follow through on these commitments only to the extent the Commission requires it to do so.

Several months ago, SBC/Ameritech committed to provide loop acceptance testing in the Ameritech states. (Tr. 588) After repeated delays, SBC/Ameritech finally began limited acceptance testing in Illinois on May 23, 2000. (Tr. 587-88) As required by SBC/Ameritech, Rhythms and other CLECs entered into amendments to their interconnection agreements with SBC/Ameritech to include detailed provisions for acceptance testing. Pursuant to such amendments, SBC/Ameritech is required to perform acceptance testing on a loop whenever such testing is requested by the CLEC. Rhythms has requested that SBC/Ameritech conduct acceptance testing on all loops that it is provisioned. (Tr. 589) Nevertheless, as SBC/Ameritech witness Ms. Regan acknowledged, only a small percentage of the loops for which Rhythms and other CLECs have requested acceptance testing have actually been tested. (Tr. 589)

There continue to be significant problems in SBC/Ameritech's provision of loop acceptance testing. Under the terms of Rhythms' interconnection agreement amendment with SBC/Ameritech, the SBC/Ameritech technician is to call Rhythms' Network Operation Center for every order for which Rhythms requests loop acceptance testing. Such testing is to occur one day prior to the date on which the loop is due to be provided to Rhythms. To date, SBC/Ameritech has failed to call in to Rhythms for a significant percentage of Rhythms' loop orders. Moreover, to the extent such testing takes place, it occurs on the date on which the loop is due to Rhythms. As a result, if a problem is discovered during acceptance testing, there is a significant likelihood that Rhythms will be unable to meet the due date it has provided to its end user customer.

While SBC/Ameritech suggests that it is working to improve its performance in conducting acceptance testing, it provides no guarantees or timelines for meeting its contractual obligations to test 100 percent of the loops for which such testing is requested by the CLEC. Until it does, CLECs have no way of ensuring that the loops they receive from SBC/Ameritech have been installed correctly, so that they can be provided to the end user customer by the given due date. As a result, it is critical that the Commission take steps to ensure that SBC/Ameritech improves its performance immediately.

Absent a clear timeline that establishes benchmarks for SBC/Ameritech's implementation of acceptance testing, SBC/Ameritech will be able to continue its slow "roll-out" in Illinois. In their final statement, Rhythms and Covad requested that the Commission establish a timetable for SBC/Ameritech to improve its performance in conducting acceptance testing. In particular, the Commission should require that within 30 days of the

issuance of its order in this case SBC/Ameritech provide loop acceptance testing for at least 80 percent of the loops for which CLECs request such testing. After 90 days, SBC/Ameritech should be required to provide acceptance testing for at least 90 percent of the loops for which CLECs request such testing. Absent adequate incentives, however, there is little reason to believe that SBC/Ameritech will meet these targets. The Commission therefore must establish some type of penalty or incentive mechanism. Rhythms and Covad proposed that SBC/Ameritech be required to refund to the CLEC $50.00 of the nonrecurring charges for each loop SBC/Ameritech fails to test during any month in which SBC/Ameritech fails to meet the 80 percent or 90 percent threshold, respectively. (Covad/Rhythms Final Statement at 32) Obviously, SBC/Ameritech should strive to call in on 100 percent of the orders for which CLECs request loop acceptance testing. Rhythms and Covad also support NorthPoint's suggestion that, in the event SBC/Ameritech fails to meet Commission-ordered goals, the Commission should issue an Order to Show Cause for the purpose of allowing SBC/Ameritech to explain why penalties should not be assessed on the company for its failure to meet its commitments. It is essential that SBC/Ameritech be given an incentive to improve its admittedly poor performance in this area.

3. The Commission Must Ensure that SBC/Ameritech Follows Through on the Commitments It Made at the Hearing.

At the hearing in this proceeding, SBC/Ameritech made certain commitments regarding loop acceptance testing and cooperative maintenance testing. First, SBC/Ameritech committed to provide loop acceptance testing for ISDN loops, as well as all types of ADSL loops. SBC/Ameritech stated that it would roll out such testing within 30 days.

(Tr. 587-88) Second, SBC/Ameritech committed to offer cooperative maintenance testing, which it previously had refused to provide in Illinois and other Ameritech states. In both cases, SBC/Ameritech stated that these processes would mirror SBC's offerings in California.

Despite the passage of several weeks since the hearing, SBC/Ameritech still has not met the commitments that were made at the hearing. In the case of loop acceptance testing, several months passed between the date on which SBC/Ameritech expressed its commitment to provide such testing in the Ameritech states and the offering of that testing on a wide-scale basis. Subsequently, several additional months have passed during which significant implementation problems continue to arise. As a result, the Commission must take action to ensure that Ameritech follows through on the commitments that it made to the Commission and CLECs at the hearing in this proceeding.

With regard to ISDN loops, the HEPO correctly finds that testing for ISDN loops is within the scope of this proceeding. Although SBC/Ameritech has told CLECs that such testing will be offered at some point, SBC/Ameritech currently is not doing so and has not provided a date certain for such testing to begin. The Commission must set a date certain by which SBC/Ameritech should offer loop acceptance testing for all types of loops including ISDN. These loops should be included in the performance targets proposed by Rhythms and Covad, which would take effect 30 days after the Commission issues an order in this proceeding.

With regard to cooperative maintenance testing, SBC/Ameritech still has not made a formal offering of this product. Such testing is critical to ensure that a loop has actually been repaired before a trouble ticket is cleared by an SBC/Ameritech technician. Given

SBC/Ameritech's failure to move forward with this offering, it is essential that the Commission establish firm deadlines for SBC/Ameritech to roll out such testing in Illinois, with incentives for SBC/Ameritech to meet these deadlines. In particular, the Commission should require that within 30 days of the issuance of its order SBC/Ameritech provide cooperative testing for 80 percent of the loops for which such testing is requested, subject to a refund to the CLEC of $50.00 of the non-recurring cost for each such loop SBC/Ameritech fails to test during any month in which SBC/Ameritech fails to meet the 80 percent threshold. Within 90 days SBC/Ameritech should be required to test 90 percent of the loops for which such testing is requested, subject to a refund to the CLEC of $50.00 of the non-recurring cost for each such loop SBC/Ameritech fails to test during any month in which the 90 percent threshold is not met.

The timelines proposed by Rhythms and Covad are reasonable for the implementation of acceptance testing and cooperative maintenance testing in Illinois. SBC/Ameritech's affiliate, Pacific Bell, has performed acceptance testing for CLECs in California since March of 1999. (Covad/Rhythms Final Statement, p. 30) In Illinois, SBC/Ameritech began limited acceptance testing on May 23, 2000. (Tr. 588) Having already begun limited acceptance testing in Illinois and having nearly two years experience in California, SBC/Ameritech can be expected to be held to these guidelines. Additionally, SBC/Ameritech has been providing cooperative maintenance testing in California for over a year. (Tr. 593) This is the same testing process that SBC/Ameritech has agreed to mirror in Illinois.

4. <u>Conclusion</u>

Despite SBC/Ameritech's contention, Issue 56 has not been settled. The Commission must take action to ensure that SBC/Ameritech makes a meaningful offering of loop

acceptance testing and cooperative maintenance testing in Illinois. Such action is critical to guarantee that Illinois consumers are provided the high quality service that they rightfully should expect.

B. Specific Exceptions

1. The "Background" section should be revised as follows:

> The issue here is whether AI should have to ~~perform~~ offer to CLECs acceptance testing and cooperative testing ~~on~~ in an effective manner for all types of xDSL-capable loops, as well as ISDN loops ~~for NorthPoint~~. (Joint Petition, Exh. A at 18; NorthPoint Init. Comments at 3-12). "Acceptance testing" is testing to ensure a loop is working properly at the time it is first provisioned to the CLEC. Tr. 583. "Cooperative testing" is testing performed after maintenance on a CLEC's loop to make sure the loop has been repaired. *Id.* The parties have been able to settle this issue to a certain point. AI has agreed in principle to perform both acceptance testing and cooperative testing for xDSL-capable loops. (Tr. 587).
>
> There are still a number of outstanding issues in this regard, however. First, the CLECs contend that the Commission should take steps to ensure that AI follows through on its commitments to improve its performance in providing acceptance testing and to begin offering cooperative maintenance testing. In addition, NorthPoint believes that x-DSL capable encompasses ISDN loops and therefore AI should be required to test these loops as well. While AI committed at the hearing to provide acceptance testing for such loops, it asserts that this issue is beyond the scope of this proceeding.

2. The "CLEC Position" section should be revised as follows:

> Cooperative testing has become standard practice in the industry for isolating maintenance problems and verifying successful resolution of trouble tickets. In the absence of cooperative testing, CLECs will be forced to rely on AI's representation that a maintenance and repair issue has been resolved. The experience of CLECs is that they cannot

reasonably rely on such representations. AI currently is not offering cooperative testing in Illinois.

AI and CLECs have reached agreement on testing for x-DSL capable loops. At the hearing, however, NorthPoint and Rhythms indicated that AI had tested only a small percentage of the loops for which they had requested acceptance testing. In addition, t~~T~~he CLECs~~, however,~~ maintain that the collaborative issue also included testing on ISDN loops which are x-DSL capable. NorthPoint, therefore, states that this issue is not settled and recommends that the Commission adopt its proposal for testing ISDN loops.

NorthPoint states that it is more experienced with cooperative acceptance testing and is therefore in a better position to propose proper procedures than is AI - which has no experience in this area. NorthPoint further states that their proposal is consistent with successful cooperative acceptance testing in other ILEC regions.

NorthPoint suggests that AI needs to purchase "test sets" that are used to test ISDN loops. It argues, however, that obtaining these test sets would not require a large capital outlay because it would not be necessary for AI to purchase these test sets for all of its technicians. According to NorthPoint, AI need only assign a limited number of its technicians to focus exclusively on provisioning and maintaining DSL loops. In response to AI's claim that this practice is too expensive, CLECs point out that Rhythms and others are willing to pay the cost of dispatching the ILEC technician when the trouble lies in the CLEC's network.

NorthPoint also suggests in its final comments that certain goals be adopted by the Commission. Specifically it requests that:

(1) AI should conduct cooperative acceptance tests on at least 90% of all ADSL-capable loops by November 8, 2000.

(2) AI should conduct cooperative acceptance tests on at least 90% of ISDN loops and maintenance tickets opened on ISDN loops by January 8, 2001.

(3) AI should conduct cooperative acceptance tests on at least 90% of all maintenance tickets opened on ADSL-capable loops by November 8, 2000. (NorthPoint Final Comments, p. 18-19).

Similarly, Rhythms and Covad suggest that the Commission adopt the following performance targets:

(1) Within 30 days of the issuance of an order in this case, AI should provide loop acceptance testing for at least 80% of the loops (whether xDSL or ISDN) for which CLECs request such testing.

(2) Within 90 days of the issuance of an order in this case, AI should provide loop acceptance testing for at least 90% of the loops (whether xDSL or ISDN) for which CLECs request such testing.

(3) Within 30 days of the issuance of an order in this case, AI should provide cooperative maintenance testing for at least 80% of the loops (whether xDSL or ISDN) for which CLECs request such testing.

(4) Within 90 days of the issuance of an order in this case, AI should provide cooperative maintenance testing for at least 90% of the loops (whether xDSL or ISDN) for which CLECs request such testing.

Rhythms and Covad request that the Commission establish certain incentives to encourage AI to meet these deadlines: AI should be required to refund to the CLEC $50.00 of the nonrecurring charges for each loop AI fails to test during any month in which AI fails to meet the 80 percent or 90 percent threshold, respectively

3. The "Analysis and Conclusion" section should be revised as follows:

The Commission finds that loop acceptance testing and cooperative maintenance testing are important means for improving the quality of service provided by CLECs to their end user customers. While AI has agreed in principle to provide these services to CLECs in Illinois, the record shows that it has so far failed to follow through on these commitments. In the case

of loop acceptance testing, AI acknowledged that it failed to effectively roll out this offering. With regard to cooperative testing, AI had not yet begun offering such testing in Illinois as of late November, nor had it committed to a date by which it will do so. In light of these delays, the Commission agrees with the CLECs that it is appropriate for the Commission to establish specific timetables and goals for AI's offering of loop acceptance testing and cooperative maintenance testing. The Commission adopts the proposed timetables submitted by Rhythms and Covad, along with the incentives they propose. The Commission concludes that such incentives are necessary to ensure that AI meets these deadlines. Given that these essentially are service quality initiatives, the Commission expects AI to strive to call in to the CLEC on every order for which loop acceptance or cooperative testing is requested. At a minimum, however, AI must meet the 80% and 90% benchmarks within 30 and 90 days, respectively, subject to the refunds proposed by Rhythms and Covad.

While ISDN is not sufficiently defined for our~~t~~ purposes, the Commission does not believe that ISDN is beyond the scope of this proceeding. NorthPoint attached a letter to Thomas Harvey, Vice President of SBC Wholesale Markets, dated September 12, 2000 which reads: "NorthPoint protests SBC's decision not to provide cooperative acceptance tests on ISDN loops." (Exhibit 5 of NorthPoint Final Comments). AI cannot now claim that it was unaware of this issue. Additionally, the hearing record shows that in fact ISDN was discussed. (Tr. 580-81).

The Commission finds NorthPoint's proposal to be reasonable. NorthPoint states that the test kits are "effective and easy to use." (NorthPoint Final Comments, p. 7). In addition, NorthPoint points to other ILECs, such as Verizon, that successfully use these test kits. Furthermore, NorthPoint and other CLECs have agreed to pay for the testing. The Commission finds this to be appropriate and further orders that the cost be reasonably adjusted to include the cost of purchasing test kits. The number of ISDN loops that NorthPoint orders is not part of the record, therefore the number of kits that must be purchased and the number of service-people that must be trained on this testing cannot be determined at this time.

~~We turn now to the goals that NorthPoint sets out in its final comments. The Commission needs Ameritech to comment on the reasonableness of those goals and its ability to meet those dates in the next brief it files for this proceeding.~~

V. DISPUTED ISSUE 94: DARK FIBER/COPPER INQUIRY PROCESS

Statement of Issue: **CLECs require the ability to make inquiries of SBC/Ameritech regarding the placement and availability of dark fiber, digital loop carriers and spare copper loops at specific locations. The current process for obtaining this information from SBC/Ameritech is manual and too time consuming. SBC/Ameritech must respond to such inquiries within 24 hours. In addition, the process should be changed to an electronic inquiry process by March 1, 2001. The HEPO rejected the request for an electronic inquiry process, and adopted SBC/Ameritech's response intervals.**

Competitive Ramifications: **CLECs are unable to quickly determine the placement and availability of dark fiber, and whether digital loop carriers and spare copper loops exist at specific locations. It is essential that CLECs are provided this information quickly, in order to meet service commitments to their customers. The delay inherent in the current process puts CLECs at a competitive disadvantage to SBC/Ameritech, since SBC/Ameritech has this information readily available to it. Rejection of the CLEC position will result in a continuation of significant delays in obtaining information and, therefore, in providing service to CLEC customers.**

Covad and Rhythms join in the discussion of this issue contained in the Brief on Exceptions of 21st Century Telecom of Illinois, Inc.

VI. CONCLUSION

For the reasons set forth herein, Covad Communications Company and Rhythms Links, Inc. respectfully request that the Commission revise the Hearing Examiner's Proposed Order in the manner described herein.

Dated: November 29, 2000

Respectfully submitted,

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